

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

BOBBY E. HAZEL,

Plaintiff,

v.

Civil Action No. 2:09cv70

**HARLEY LAPPIN, JOE DRIVER,
JEFF BOYLES and
DR. JORGE S. VAZQUEZ,**

Defendants.

ORDER

It will be recalled that on November 30, 2009, Magistrate Judge John S. Kaull filed his Report and Recommendation, wherein the Plaintiff was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. Plaintiff filed his objections on December 9, 2009.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Plaintiff in his civil rights Complaint, wherein Plaintiff alleges violations of his constitutional rights related to his medical care, were thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation. Upon review of the Plaintiff's objections, the Court finds that the Plaintiff has not raised any issues that were not already throughly considered and addressed by the Magistrate Judge in his Report and Recommendation. Moreover, the Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. On December 16, 2009, the Plaintiff filed Plaintiff's

Motion Pursuant to Federal Rule of Civil Procedure 60(b)(1) Mistake, Inadvertence, Surprise or Excusable Neglect. The Magistrate Judge's Report and Recommendation is not a final judgment or order. Accordingly, Rule 60 of the Federal Rules of Civil Procedure is not applicable. Therefore, the Court will consider the Plaintiff's December 16, 2009 filing as additional objections to the Magistrate's Report and Recommendation, upon review of which, the Court finds that the Plaintiff has not raised any new issues affecting those findings made by Magistrate Judge Kaull in his Report and Recommendation. Therefore, it is

ORDERED that Magistrate Judge Kaull's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Plaintiff's Motion for Preliminary Injunction (Docket 60) shall be, and the same hereby is, **DENIED**. It is further

ORDERED that Plaintiff's Motion for Discovery and to Stay (Docket 79) shall be, and the same hereby is, **DENIED**. It is further

ORDERED that the Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment (Docket 70) shall be, and the same hereby is, **GRANTED**. It is further

ORDERED that Plaintiffs Motion Pursuant to Federal Rule of Civil Procedure 60(b)(1) Mistake, Inadvertence, Surprise or Excusable Neglect (Docket 84) shall be, and the same hereby is, **DENIED**. It is further

ORDERED that the Plaintiff's civil rights complaint be, and the same hereby is, **DISMISSED with prejudice** and that this civil action be **STRICKEN** from the docket of the Court. It is further

ORDERED that the Clerk shall enter judgment for the Defendants. It is further

ORDERED that, if Plaintiff should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

The Clerk of the Court is directed to transmit a copy of this Order to all parties appearing herein.

ENTER: January 6th, 2010

/s/ Robert E. Maxwell
United States District Judge